

This is the second preliminary hearing held in this case and the second preliminary hearing Order entered. As a result of the first preliminary hearing, Administrative Law Judge Jon L. Frobish denied claimant's request for temporary total disability and medical benefits finding claimant failed to prove he suffered an accidental injury that arose out of and in the course of his employment.

The claimant timely appealed that Order to the Appeals Board. In an Order dated August 30, 1996, the Appeals Board reversed the Administrative Law Judge and found claimant had proved he suffered a work-related accident. The preliminary hearing Order was remanded to the Administrative Law Judge to designate an appropriate treating physician and for a determination regarding the amount of temporary total disability benefits.

Following the Appeals Board Order, the respondent, in October 1996, took the evidentiary deposition of claimant's initial treating physician, Tony D. Luna, M.D., and claimant's wife, Kathy Lynch. Thereafter, on October 9, 1996, the respondent filed an Application for Preliminary Hearing requesting that claimant be denied compensation benefits based on new evidence. The preliminary hearing was held on January 22, 1997, which also contained the additional testimony of the claimant. As a result of that hearing, Administrative Law Judge Kenneth S. Johnson found claimant had failed to prove that his bilateral carpal tunnel syndrome was related to his work with respondent.

The Appeals Board has reviewed the additional evidence the respondent has presented through the testimony of Dr. Luna, Kathy Lynch, and the claimant. The Appeals Board finds the only new relevant evidence presented by the respondent is contained in the deposition of Dr. Luna. The respondent argues that after Dr. Luna learned claimant had performed additional work activities with his hands at a car lot during the same period of time he was working for the respondent, Dr. Luna could not attribute claimant's carpal tunnel syndrome condition to claimant's work of driving a patrol car. The Appeals Board finds that Dr. Luna did make that conclusion. However, on cross-examination, Dr. Luna was provided the testimony of the claimant at the first preliminary hearing in reference to the frequency that he performed those work activities. Dr. Luna then opined he did not think claimant's work at the car lot could have caused his carpal tunnel syndrome condition. Claimant's testimony as to the frequency he performed those work activities was uncontradicted.

The Appeals Board finds its August 30, 1996, Order is accurate and appropriate in regard to the evidence presented at the first preliminary hearing. The Appeals Board further finds there is no need to repeat those findings and conclusions in this Order. Therefore, those findings and conclusions are adopted by the Appeals Board as if specifically set forth herein.

The Appeals Board concludes, based on the findings and conclusions in its August 30, 1996, Order and the additional findings and conclusions set forth herein, that the February 24, 1997, preliminary hearing Order should be reversed. The Appeals Board concludes the preliminary hearing record supports the finding that it is more probably true than not that claimant's bilateral carpal tunnel syndrome condition is related to his work activities he performed while employed by the respondent. Accordingly, the Appeals Board orders the respondent to continue providing claimant with medical treatment. The question of whether claimant is entitled to either temporary total disability or temporary partial

disability benefits has not been resolved and that issue is remanded to the Administrative Law Judge for determination.

**WHEREFORE**, the Appeals Board finds that the Order of Administrative Law Judge Kenneth S. Johnson dated February 24, 1997, should be, and the same is hereby, reversed. The respondent is ordered to continue to provide medical treatment as was being provided before the preliminary hearing Order of the Administrative Law Judge. The issue of whether claimant is entitled to either temporary total disability or temporary partial disability benefits is remanded to the Administrative Law Judge for determination.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1997.

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BOARD MEMBER

c: Jeffrey D. Wicks, Great Bend, KS  
James M. McVay, Great Bend, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director